Criminal Law: The Liability of the Father to Provide for his Child although Others Care for it.—The California Penal Code sec. 270 makes it a felony for a father wilfully to neglect or fail, without lawful excuse to provide his minor child with necessary food, clothing, shelter and medical attendance. In construing this statute, the question arises whether the child must actually suffer from want of necessaries in order to make out the crime. Is it a good defense for the wilful neglect of the father that a good grandmother or kind-hearted neighbor supplied the child with the things it needed? The California Supreme Court has not definitely passed upon the point. In the matter of McMullen[1] the prosecution under sec. 270 failed, because the custody of the child had been given the mother in a divorce decree. [The court construed sec. 196 of the Civil Code to mean that the father is prima facie relieved of the legal duty of supporting his child where he is deprived of its custody by the court's order.] In People v. Hartman[2] counsel contended that the father was not criminally liable for neglect, because others had cared for his child. The District Court of Appeal expressly left the matter undecided. It, however, quoted at length from the Missouri case[3] upon which counsel largely relied as authority for the proposition that the child must starve before the father can be indicted.

Actual want is said to be an element of the crime, because the purpose of the criminal law is to protect the child rather than to punish the father. So long as the child is supplied, it is a matter of no consequence who supplies it or how it is supplied. Such reasoning is clearly wrong. Reasoning from the purpose of the statute, as the Missouri court purports to do, the section of the Penal Code in question cannot be considered as primarily and only for the protection of the child from want. The only protection afforded by the Penal Code is found in the fear of punishment. The father has an additional motive to care for his child. The application of the law in imposing imprisonment and fine does the child no good; indeed, it will probably render the father less able to supply the child's needs. Civil remedies against the father would be more beneficial to the child. The purpose of the criminal statute is to punish the father who wilfully neglects his duties as a parent.

The Georgia[4] and Kentucky[5] cases are not authorities for the reasoning quoted in People v. Hartman. The Georgia Penal Code, sec. 114, before its amendment in 1907 provided that "if any father wilfully and voluntarily abandons his child, leaving it in a dependent and destitute condition, he shall be guilty of a misdemeanor." The statute made destitution an element of the crime. The Kentucky

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[1] (1913) 164 Cal. 504, 129 Pac. 773; 1 Cal. Law Review 286.
[2] (Oct. 21, 1913) 17 Cal. App. Dec. 419.
[3] State v. Thornton, (1911) 232 Mo. 298, 134 S. W. 519.
[4] Dalton v. State, (1903) 118 Ga. 196, 44 S. E. 977, and line of cases until amendment of 1907.
[5] Richie v. Commonwealth, (1901) 23 Ky. Law Rep. 1237, 64 S. W. 979.

statute makes abandonment of the child "with a reckless disregard" of its "life or health" an element of the crime.

The trend of modern American authority[6] is to hold the father criminally liable for his wilful neglect whether or not the child suffers by the concurrent neglect of others. In Hunter v. State,[7] the Oklahoma statute is so construed. Its wording is practically the same as that of the California Penal Code.

C. S. J.

Deeds: Conditional Delivery.—The terminology employed in this branch of the law of property is probably responsible for some of the confusion which has resulted in treating certain deeds intended to take effect presently, as escrows. The deeds referred to are those which are delivered to a third person to await the happening of the contingency of the death of the grantor, and not the performance of a condition, before their delivery to the grantee. Such a delivery is often referred to in this country as a conditional delivery—a phrase, which, it is submitted, is misleading. To be a valid delivery, it must be absolute and must vest the title in the grantee at the first delivery. On the other hand, an escrow is truly conditional, for the future delivery depends upon the payment of money or the performance of some other condition, and usually rests upon some contractual relation. The title does not pass until the performance of the condition.

The English view, as expressed by Farwell, L. J., is: "There are two sorts of delivery, and two only, known to the law, one absolute, and the other conditional, that is an escrow to be the deed of the party when, and if, certain conditions are performed."[1]

The situation presented in the recent case of Long v. Ryan[2] is as follows: A executes a deed to B and places it in the hands of C, to be delivered to B if A should die before a given date, but to be returned to A if, on the given date, A should be still living. A died before the date named and C delivered the deed to B. The court held there was no delivery and cancelled the deed. It seems clear that such an arrangement is not an escrow, for the reason that the death of the grantor cannot be made the condition upon the happening of which an escrow shall be delivered as a deed. A deed of grant of the grantor's own property to take effect only on his death, is necessarily testamentary. Nor do the circumstances in the principal case amount to a "deed presently," for in order that it amount to an absolute and valid delivery, the grantor must place the deed out of his power and control. Many cases say that it must be placed out of his power and control for all time, and others that he must

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[6] State v. Stouffer, (1901) 65 O. St. 47, 60 N. E. 985; State v. Peabody, (1904) 25 R. I. 544, 56 Alt. 1028; Cleveland v. State, (1910) 7 Ga. App. 622, 67 S. E. 696.

[7] (Sept. 17, 1913) 134 Pac. 1134 (Okl.)

[1] Foundling Hospital v. Crane, (1911) 2 K. B. 367, at p. 377.

[2] (Dec. 3, 1913) 46 Cal. Dec. 466.